

*Proposed*  
**1972 CONSTITUTION**  
*for the*  
**STATE of MONTANA**

**OFFICIAL TEXT WITH EXPLANATION**

*Submitted by the  
Montana Constitutional Convention*

**THIS PROPOSED CONSTITUTION WILL BE  
SUBMITTED TO THE VOTERS OF MONTANA AT A  
SPECIAL ELECTION<sup>1</sup> ON JUNE 6, 1972**

# **CONSTITUTIONAL LAW**

**State Bar of Montana**

**Law School for Legislators**

**66th Legislative Session (January 2019)**

**Anthony Johnstone**

**Blewett School of Law**

**The University of Montana**

# CONSTITUTIONAL LAW

- I. Introduction: Popular Sovereignty
- II. Dual Sovereignty
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  - B. Federal Enumerated Powers
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# CONSTITUTIONAL LAW

## I. Introduction: Popular Sovereignty





# CONSTITUTIONAL LAW

## I. Introduction: Popular Sovereignty

**Popular sovereignty.** All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Art. II, § 1.

**Self-government.** The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Art. II, § 2.

# CONSTITUTIONAL LAW

## I. Introduction: Popular Sovereignty

**Preamble.** *We the people of Montana* grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.



# CONSTITUTIONAL LAW

## I. Introduction: Popular Sovereignty

**Oath of office.** [A]ll [legislative,] executive, ministerial and judicial officers, shall [swear or affirm to] support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God). Art. III, § 3.

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**Right of suffrage.** All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.  
Art. II, § 13.



# CONSTITUTIONAL LAW

## I. Introduction: Popular Sovereignty

**Periodic submission.** [T]he question of holding a convention ... shall be submitted as provided by law at the general election in the twentieth year following the last submission. Art. XIV, § 3.

**Amendment by legislative referendum.** Amendments to this constitution may be ... adopted by [two-thirds of the members of the legislature, and if] approved by a majority of the electors voting thereon, the amendment shall [be ratified] ... Art. XIV, § 8.

**Amendment by initiative.** The people may also propose constitutional amendments by initiative ... If approved by a majority voting thereon, it shall [be ratified]. Art. XIV, § 9.

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# CONSTITUTIONAL LAW

## II. Dual Sovereignty



*We the people of Montana*



# CONSTITUTIONAL LAW

## II. Dual Sovereignty



*We the people of Montana*



*We the people of the U.S.*



# CONSTITUTIONAL LAW

## II. Dual Sovereignty



*We the people of the U.S.*



*We the people of Montana*

# CONSTITUTIONAL LAW

## II. Dual Sovereignty

**[Federal Powers.]** “[T]he supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Art. VI.2

**[Federal Rights.]** “No State shall ...” e.g., U.S. Am. XIV.

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### **[Reserved State Powers.]**

“[P]owers ... reserved to the States [or] people.” U.S. Am. X.

### **[Retained State Rights.]**

“[R]ights ... retained by the people.” U.S. Am. IX.

**[Federal Rights.]** “No State shall ...” U.S. Am. XIV.



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# CONSTITUTIONAL LAW

## A. Federal Supremacy & State Reserved Powers

**[Federal supremacy.]** This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Art. VI, § 2.

**[Reserved powers.]** The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Amend. X.



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# CONSTITUTIONAL LAW

## B. Federal Enumerated Powers

**[Legislative powers.]** All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Art. I, § 1.

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Amend. X.



# CONSTITUTIONAL LAW

## B. Federal Enumerated Powers

**[Taxation and spending.]** The Congress shall have Power To lay and collect Taxes ... to pay the Debts and provide for the common Defence and general Welfare of the United States ...

Art. I, § 8(1)

**[Federal property.]** The Congress shall have Power to ... make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States ...

Art. IV, § 3(2).

# CONSTITUTIONAL LAW

## B. Federal Enumerated Powers

**[Commerce.]** To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes ...

Art. I, § 8(3).

# CONSTITUTIONAL LAW

## B. Federal Enumerated Powers

**[Necessary and proper.]** To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution ...

Art. I, § 8(18).

**[Civil rights.]** Congress shall have power to enforce, by appropriate legislation, the provisions of [Amend. XIV].  
Amend. XIV, § 5.



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# CONSTITUTIONAL LAW

## III. Constitutional Powers

**Separation of powers.** The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial ... Art. III, § 1.

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# CONSTITUTIONAL LAW

## A. Legislative **Powers**, Duties, & Limits

**Power and structure.** *The* legislative power is vested in a legislature ... The people reserve to themselves the powers of *initiative and referendum*. Mont. Const. Art. V, § 1.

# CONSTITUTIONAL LAW

## A. Legislative Powers, **Duties**, & Limits

**Educational goals and duties.** The legislature shall provide *a basic system of free quality* public elementary and secondary schools ... Art. X, § 1(3).

**[Environmental] Protection and improvement.** The legislature shall provide for the administration and enforcement of [the duty to] maintain and improve *a clean and healthful environment* in Montana for present and future generations. Art. IX, § 1.

**Nonmunicipal corporations.** ... The legislature shall provide protection and education for the people against *harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.* Art. XIII, § 1(2).

# CONSTITUTIONAL LAW

## A. Legislative Powers, **Duties**, & Limits

**Code of ethics.** The legislature shall provide a code of ethics *prohibiting conflict between public duty and private interest* for members of the legislature and all state and local officers... Art. XIII, § 4.



# CONSTITUTIONAL LAW

## A. Legislative Powers, Duties, & **Limits**

**[O]bligation of contracts, and irrevocable privileges.** ... No law impairing the obligation of contracts, or making any *irrevocable grant of special privileges* ... shall be passed ... Art. II, § 31.

**Local and special legislation.** The legislature shall not pass *a special or local act* when a general act is, or can be made, applicable. Art. V, § 12.

**Initiative.** The people may enact laws by initiative on all matters *except appropriations* of money and *local or special laws*. Art. III, § 4(1).

# CONSTITUTIONAL LAW

## A. Legislative Powers, Duties, & **Limits**

**Separation of powers.** The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. *No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.* Art. III, § 1.

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# CONSTITUTIONAL LAW

## B. Executive Powers

**Officers.** The executive branch includes a governor, lieutenant governor, *secretary of state, attorney general, superintendent of public instruction, and auditor...* Each shall reside ... perform such other duties as are provided in this constitution and by law. Art. VI, § 1.



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# CONSTITUTIONAL LAW

## C. Judicial Power

**Judicial power.** The *judicial power* of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law. Art. VII, § 1.

**Selection.** Supreme court justices and district court judges shall be *elected by the qualified electors ...*  
Art. VII, § 8.

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# CONSTITUTIONAL LAW

## A. Inalienable Rights

**Inalienable rights.** All persons are born free and have certain inalienable rights. They include the right to *a clean and healthful environment* and the rights of *pursuing life's basic necessities*, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities. Art. II, § 3.

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# CONSTITUTIONAL LAW

## B. Individual Dignity & Equality

**Individual dignity.** The *dignity* of the human being is inviolable. No person shall be denied the equal protection of the laws. *Neither the state nor any person*, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas. Art. II, § 4.



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# CONSTITUTIONAL LAW

## C. Right of Privacy

**Right of privacy.** The right of *individual privacy* is *essential to the well-being of a free society* and shall not be infringed without the showing of a compelling state interest. Art. II, § 10.

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# CONSTITUTIONAL LAW

## D. Right of Participation / Right to Know

**Right of participation.** The public has the right to expect governmental agencies to afford such *reasonable opportunity for citizen participation* in the operation of the agencies prior to the *final decision as may be provided by law*. Art. II, § 8.



# CONSTITUTIONAL LAW

## D. Right of Participation / Right to Know

**Right of participation.** The public has the right to expect governmental agencies to afford such *reasonable opportunity for citizen participation* in the operation of the agencies prior to the *final decision as may be provided by law*. Art. II, § 8.

**Right to know.** No person shall be deprived of the right to examine *documents* or to observe the *deliberations* of *all public bodies* or agencies of state government and its subdivisions, except in cases in which the demand of *individual privacy clearly exceeds* the merits of public disclosure. Art. II, § 9.

# CONSTITUTIONAL LAW

[Epilogue]

# CONSTITUTIONAL LAW

**Thank you.**

Questions or comments?

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